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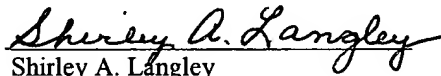
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: **Mark R. Johansen**
Serial No. 09/606,702
Filed: June 29, 2000
For: **Multiple Layer Polymeric Cap and
Method of Making the Same**
Group Art Unit: 3727
Examiner: Niki Marina Eloshway
In reply to: Examiner's Answer of May 6, 2005

Certificate of Mailing

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Shirley A. Langley

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPELLANT'S REPLY BRIEF

Pursuant to Rule 1.193(b), this Reply Brief is directed only to the new points of argument raised in the Examiner's Answer mailed on May 6, 2005.

“The original disclosure does not state when the container is filled” is a non-sequetor or red herring.

The contention at page 3-4 of the Examiner’s Answer that “The original disclosure does not state when the container is filled” is a non-sequetor which fails to address the controlling law of whether the disclosure of the application reasonably conveys to persons of ordinary skill in the art that the inventor had possession of the claimed subject matter which is the specific method defined by claim 23 of making a fuel container with an opening and a cap permanently closing and sealing the opening.

Undisputedly, the written description does “not state at which point in the manufacture of the container the container is filled with fuel or any other substance”. It does not do so because it is not filled during manufacture by the method of claim 23.

The original specification does not state when the container is filled because it discloses a method of manufacture of a fuel container (as defined by claim 23) in which

- (a) During manufacture of the fuel container, it is not filled with fuel or any other substance;
- (b) Since it is not filled with a substance during manufacture, there was no need to make any such statement or disclosure;
- (c) The written description and drawings make clear that there is no “fuel container” until after the method steps of claim 23 have been completed and consequently there is no “fuel container” to fill until its manufacture is completed by carrying out all of the steps defined by claim 23;
- (d) Skilled persons would recognize there is no filling during the steps called for by claim 23 of providing a pair of mold halves, providing a parison, closing the mold halves together to compress a portion of the parison

between them to form a flash section with a cap in the flash section by compression molding, providing a pressurized fluid into the parison to form the container and define its shape by blow molding, forming an opening through the container body, separating the cap from the flash section, and heat welding the cap to the container to permanently attach and seal the cap to the container to permanently close and seal the opening.

Skilled persons would recognize that there is no “fuel container” as disclosed until all of these steps have been performed and that all of these steps would be performed without and before any filling of the fuel container. Persons of ordinary skill in manufacturing plastic fuel tanks would recognize that all of the steps of claim 23 would all be performed without any filling of the container body with fuel or other substances. Indeed, as disclosed, there is no fuel container to be filled with anything until all of these steps defined by claim 23 have been completed.

The various statements on page 4 of the Examiner’s Answer as to when during manufacture of the container body it might be filled are pure speculation, not supported by any evidence of record, and contrary to the knowledge and understanding of skilled persons that when carrying out the steps called for by claim 23 to manufacture and thus actually have a “fuel container”, there would be no filling of the container body particularly since the written description contains absolutely nothing to suggest any filling during manufacture or even thereafter.

The phrase “before filling the container is not limited to the addition of fuel” is irrelevant.

The assertion that the phrase “before filling the container is not limited to the addition of fuel” is irrelevant and misleading because persons of ordinary skill in the manufacture of fuel tanks of polymeric materials recognize and understand that

- (a) As disclosed in the written description, there is no “fuel container” to be filled with anything until after the manufacturing steps defined by method claim 23 have been completed;
- (b) Since claim 23 is interpreted in light of the specification, there is absolutely no suggestion or indication that during manufacture of the fuel container by the steps defined by method claim 23, it would be filled with fuel or any other substance.

Skilled persons would recognize that during the blow molding step, the parison, not the container, would be filled with air, and that the blow molding step of claim 23 in and by itself does not produce the “fuel container” and upon completion of the blow molding step, the shaped hollow parison is not the “fuel container” manufactured by completing all of the steps defined by claim 23. Therefore, contrary to the contention at page 4-5 of the Examiner’s Answer, filling the parison, not the container, with air during the blow molding step does not contradict the limitation that the cap is separated, disposed over the opening, and heat welded to the container body “before filling the container”.

Contrary to the contention on page 5 of the Examiner’s Answer, the specification, at page 5, line 21 through page 6, line 3, clearly and carefully states that “After closing the die halves 30, 32 together, a pressurized fluid, such as air, is provided into the interior

of the parison through a blow pin in a conventional manner to outwardly expand the parison into engagement with the mold halves 30, 32.” (Emphasis added) Thus, the specification makes clear to skilled persons that it is the parison, not the container, which is filled with pressurized air during the step of blow molding which is only one of eight steps called for by claim 3 all of which must be completed to produce the fuel container. Thus, the contention in the Examiner’s Answer that the phrase “before filling the container” conflicts with the written description and claim 23 is wrong and based on a incorrect reading and interpretation of the written description which is contrary to both the explicit statements in the written description and the way the written description would be interpreted by persons of ordinary skill. Therefore, this erroneous and misleading contention should be rejected.

Conclusion

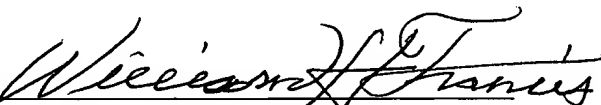
For the above reasons, as well as the reasons set forth in Applicant's Appeal Brief, the phrase "before filling the container" when interpreted by skilled persons in view of the written description and the steps of method claim 23 does not introduce any new matter, is consistent with and supported by the original specification, and would be understood by skilled persons as simply explicitly stating their understanding of what the written description discloses and teaches. Accordingly, all of the claims on appeal (23, 25, 26 & 28-36) comply with the requirements of the first paragraph of §112 and should be allowed.

If there are any fees due with this Appellant's Reply Brief, it is respectfully requested and hereby authorized that they be charged to Deposit Account No. 50-0852.

Respectfully submitted,

Reising, Ethington, Barnes, Kisselle, P.C.

WHF:sal

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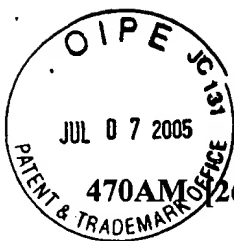
Attorneys for Appellant

William H. Francis #25,335

P. O. Box 4390, Troy, Mi 48099-4390

Telephone (248) 689-3500

Facsimile (248) 689-4071



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